

## Part 2

### State Construction Registry

#### **38-1a-201 Establishment of State Construction Registry -- Filing index.**

- (1) Subject to receiving adequate funding through a legislative appropriation and contracting with an approved third party vendor as provided in Section 38-1a-202, the division shall establish and maintain the State Construction Registry to:
- (a)
    - (i) assist in protecting public health, safety, and welfare; and
    - (ii) promote a fair working environment;
  - (b) be overseen by the division with the assistance of the designated agent;
  - (c) provide a central repository for all required notices;
  - (d) make accessible, by way of an Internet website:
    - (i) the filing and review of required notices; and
    - (ii) the transmitting of building permit information under Subsection 38-1a-205(1) and the reviewing of that information;
  - (e) accommodate:
    - (i) electronic filing of required notices and electronic transmitting of building permit information described in Subsection (1)(d)(ii); and
    - (ii) the filing of required notices by alternate means, including United States mail, telefax, or any other method as the division provides by rule;
  - (f)
    - (i) provide electronic notification for up to three email addresses for each interested person who requests to receive notification under Section 38-1a-204 from the designated agent; and
    - (ii) provide alternate means of providing notification to a person who makes a filing by alternate means, including United States mail, telefax, or any other method as the division prescribes by rule; and
  - (g) provide hard-copy printing of electronic receipts for an individual filing evidencing the date and time of the individual filing and the content of the individual filing.
- (2) The designated agent shall index filings in the registry by:
- (a) the name of the owner;
  - (b) the name of the original contractor;
  - (c) subdivision, development, or other project name, if any;
  - (d) lot or parcel number;
  - (e) the address of the project property;
  - (f) entry number;
  - (g) the name of the county in which the project property is located;
  - (h) for private projects:
    - (i) the tax parcel identification number of each parcel included in the project property; and
    - (ii) the building permit number;
  - (i) for government projects, the government project-identifying information; and
  - (j) any other identifier that the division considers reasonably appropriate in collaboration with the designated agent.

Amended by Chapter 278, 2013 General Session

**38-1a-202 Contract to establish and maintain registry -- Designated agent -- Rules -- Duties of designated agent -- Limit of liability.**

- (1)
  - (a) The division shall contract, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, with a third party to establish and maintain the registry for the purposes established under this part.
  - (b) The designated agent is not an agency, instrumentality, or political subdivision of the state.
- (2)
  - (a) The third party under contract under this section is the division's designated agent, and shall develop and maintain a registry from the information provided by:
    - (i) local government entities issuing building permits;
    - (ii) original contractors;
    - (iii) subcontractors;
    - (iv) construction lenders; and
    - (v) other interested persons.
  - (b) The registry shall accommodate filings by third parties on behalf of clients.
- (3)
  - (a) The division shall make rules and develop procedures for:
    - (i) the division to oversee and enforce this chapter and Chapter 1b, Government Construction Projects;
    - (ii) the designated agent to administer this chapter and Chapter 1b, Government Construction Projects; and
    - (iii) the form of submission of a filing by alternate means, which may include procedures for rejecting an illegible or incomplete filing.
  - (b) If this chapter directs or authorizes the division to make a rule or adopt a procedure to implement the provisions of this chapter or Chapter 1b, Government Construction Projects, the division shall make the rule or adopt the procedure in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4)
  - (a) The designated agent shall archive computer data files at least semiannually for auditing purposes.
  - (b) The division shall make rules to allow the designated agent to periodically archive projects from the registry.
  - (c) The designated agent may not archive a project earlier than:
    - (i) one year after the day on which a notice of completion is filed for a construction project;
    - (ii) if no notice of completion is filed, two years after the last filing activity for a project; or
    - (iii) one year after the day on which a contestable notice is cancelled under Section 38-1a-307.
  - (d) The division may audit the designated agent's administration of the registry as often as the division considers necessary.
- (5) The designated agent shall carry errors and omissions insurance in the amounts that the division establishes by rule.
- (6)
  - (a) The designated agent shall make reasonable efforts to assure the accurate entry into the registry of information provided by alternate means.
  - (b) The designated agent shall meet or exceed standards established by the division for the accuracy of data entry for information on documents filed by alternate means.
- (7) The designated agent is not liable for the correctness of the information contained in a document filed by alternate means which the registered agent enters into the database.

Renumbered and Amended by Chapter 278, 2012 General Session  
Amended by Chapter 347, 2012 General Session

**38-1a-203 Filings with the registry.**

- (1) The division and the designated agent need not determine the timeliness of any notice before filing the notice in the registry.
- (2) A notice filed by a third party on behalf of another is considered to be filed by the person on whose behalf the notice is filed.
- (3) A person filing a notice of commencement, preliminary notice, or notice of completion is responsible for verifying the accuracy of information entered into the registry, whether the person files electronically, by alternate means, or through a third party.
- (4) Each notice or other document submitted for inclusion in the registry and for which this chapter does not specify information required to be included in the notice or other document shall contain:
  - (a) the name of the county in which the project property to which the notice or other document applies is located;
  - (b) for a private project:
    - (i) the tax parcel identification number of each parcel included in the project property; or
    - (ii) the number of the building permit for the construction project on the project property; and
  - (c) for a government project, the government project-identifying information.

Enacted by Chapter 278, 2012 General Session

**38-1a-204 Notification of filings with the registry.**

- (1) The designated agent shall provide notification of the filing of a required notice relating to an anticipated improvement or construction project to:
  - (a) the person filing the required notice, unless the person indicates to the division or designated agent that the person does not want to receive notification; and
  - (b) each person that requests notification of the filing of a required notice for that anticipated improvement or construction project.
- (2)
  - (a) A person may request the designated agent to provide the person notification of the filing of a required notice for any anticipated improvement or construction project.
  - (b) A person requesting notification under Subsection (2)(a) is responsible:
    - (i) to provide an email address, mailing address, or telefax number to which notification may be sent; and
    - (ii) for the accuracy of the email address, mailing address, or telefax number.
  - (c) A person is considered to have requested notification under Subsection (2)(a) if the person files, with respect to the same anticipated improvement or construction project that relates to the required notice that is the subject of the notification:
    - (i) a notice of preconstruction service;
    - (ii) a notice of commencement;
    - (iii) a preliminary notice;
    - (iv) a notice of construction loan; or
    - (v) a notice of completion.

- (3) The designated agent fulfills the notification requirement under Subsection (1) by sending the notification to the email address, mailing address, or telefax number that the person provides to the designated agent, whether or not the person actually receives the notification.

Amended by Chapter 464, 2013 General Session

**38-1a-205 Building permit -- Transmission to registry -- Posting at project site.**

- (1)
  - (a) A county, city, or town issuing a building permit for a private project:
    - (i) shall, no later than 15 days after issuing the permit, input the building permit application and transmit the building permit information to the registry electronically by way of the Internet or computer modem or by any other means; and
    - (ii) may collect a building permit fee related to the issuance of the building permit, but may not spend or otherwise use the building permit fee until the county, city, or town complies with Subsection (1)(a)(i) with respect to the building permit for which the fee is charged.
  - (b) The person to whom a building permit, filed under Subsection (1)(a), is issued is responsible for the accuracy of the information in the building permit.
  - (c) For the purposes of classifying a record under Title 63G, Chapter 2, Government Records Access and Management Act, the division shall classify in the registry building permit information transmitted from a county, city, or town to the registry notwithstanding the classification of the building permit information by the county, city, or town.
- (2) At the time a building permit is obtained, each original contractor for construction service shall conspicuously post at the project site a copy of the building permit obtained for the project.

Renumbered and Amended by Chapter 278, 2012 General Session

**38-1a-206 Registry fees.**

- (1) In accordance with the process required by Section 63J-1-504, the division shall establish the fees for:
  - (a) required notices, whether filed electronically or by alternate means;
  - (b) a request for notification under Section 38-1a-204;
  - (c) providing notification of a required notice, whether electronically or by alternate means;
  - (d) a duplicate receipt of a filing; and
  - (e) account setup for a person who wishes to be billed periodically for filings with the registry.
- (2) The fees allowed under Subsection (1) may not in the aggregate exceed the amount reasonably necessary to create and maintain the registry.
- (3) The fees established by the division may vary by method of filing if one form or means of filing is more costly to process than another form or means of filing.
- (4) The division may provide by contract that the designated agent may retain all fees collected by the designated agent, except that the designated agent shall remit to the division the cost of the division's oversight.
- (5)
  - (a) A person who is delinquent on the payment of a fee established under this section may not file a notice with the registry.
  - (b) The division shall make a determination whether a person is delinquent on the payment of a fee for filing established under this section in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

- (c) Any order that the division issues in a proceeding described in Subsection (5)(b) may prescribe the method of that person's payment of fees for filing notices with the registry after issuance of the order.

Enacted by Chapter 278, 2012 General Session

**38-1a-207 Registry classification.**

- (1) The registry is classified as a public record under Title 63G, Chapter 2, Government Records Access and Management Act, unless the division classifies it otherwise.
- (2) A request for information submitted to the designated agent is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.
- (3) A person desiring information contained in a public record in the registry shall request the information from the designated agent.
- (4) The designated agent may charge a commercially reasonable fee allowed by the designated agent's contract with the division for providing information under Subsection (3).
- (5) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, if information is available in a public record contained in the registry, a person may not request the information from the division.
- (6)
  - (a) A person may request information that is not a public record contained in the registry from the division in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
  - (b) The division shall inform the designated agent of how to direct an inquiry made to the designated agent for information that is not a public record contained in the registry.

Enacted by Chapter 278, 2012 General Session

**38-1a-208 Actions that are not adjudicative proceedings.**

None of the following is an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act:

- (1) the filing of a notice permitted or required by this chapter;
- (2) the rejection of a filing permitted or required by this chapter; or
- (3) other action by the designated agent in connection with a filing of any notice permitted or required by this chapter.

Enacted by Chapter 278, 2012 General Session

**38-1a-209 Abuse of registry -- Penalty.**

- (1) As used in this section, "third party" means an owner, an original contractor, a subcontractor, or any interested party.
- (2) A person abuses the registry if that person files a notice in the registry:
  - (a) without a good faith basis for doing so;
  - (b) with the intent to exact more than is due from the owner or any other interested party; or
  - (c) to procure an unjustified advantage or benefit.
- (3) A person who abuses the registry as described in Subsection (2) is liable to a third party who is affected by the notice for twice the amount of the actual damages incurred by the third party or \$2,000, whichever is greater.

Renumbered and Amended by Chapter 278, 2012 General Session

**38-1a-210 Limitation of liability.**

- (1) The state and the state's agencies, instrumentalities, political subdivisions, and an employee of a governmental entity are immune from suit for any injury resulting from the registry.
- (2) The designated agent and its principals, agents, and employees are not liable to any person for the accuracy, coherence, suitability, completeness, or legal effectiveness of information filed or searched in the registry if the designated agent:
  - (a) develops and maintains the registry in compliance with reliability, availability, and security standards established by the division; and
  - (b) meets data entry accuracy standards established by the division under Subsection 38-1a-202(6)(b).
- (3) The designated agent and its principals, agents, and employees are not liable for their inability to perform obligations under this chapter to the extent performance of those obligations is prevented by:
  - (a) a storm, earthquake, or other act of God;
  - (b) a fire;
  - (c) an accident;
  - (d) governmental interference; or
  - (e) any other event or cause beyond the designated agent's control.

Renumbered and Amended by Chapter 278, 2012 General Session

**38-1a-211 Limit on notice effect of document filing in the registry.**

The filing of a document in the registry is not intended to give notice to all persons of the content of the document within the meaning of Section 57-3-102 and does not constitute constructive notice of matters relating to real property to purchasers for value and without knowledge.

Renumbered and Amended by Chapter 278, 2012 General Session